MEMORANDUM

To: Senator Michael Sirotkin, Chair, Senate Economic Development, Housing and General Affairs Committee

From: Tim Noonan, Executive Director, Vermont Labor Relations Board

Date: April 23, 2020

Subject: S.254, An act relating to union organizing

I am writing to respond to your request to indicate the specific concerns that the Labor Relations Board has with S.254, which is now on the Calendar to be acted on by the full Senate. This bill affects three of the labor relations acts administered by the Labor Relations Board. The Board has various concerns with the bill as it passed the Senate Economic Development Committee. I will discuss these concerns section by section. The page numbers of the bill referred to in the memorandum are from the page numbers in the April 10, 2020, Senate Calendar.

Section 1, numbered pages 2123 through 2126, amends the State Employees Labor Relations Act: Here are the concerns:

- The petition referenced in the first paragraph on page 2124 provides for petitioning "the employer and the Board for a list of the employees in the proposed bargaining unit". It is unclear why the Board would be petitioned since the Board does not have a list of employees; only the employer does. I note that this petition is different from the petitions for election of collective bargaining representative, referenced in the last paragraph on page 2123, that the Board now receives under the Act. There currently is no provision in the Act for the petition referenced in the first paragraph on page 2124.
- The list provided by the employer referenced in the third paragraph on page 2124 provides for it being sent to the Board. It is unclear why this list would be sent to the Board since no election petition has been filed with the Board to represent employees, pursuant to the last paragraph on page 2123, requiring the Board to check whether a

sufficient showing of interest has been made to warrant having an election. The list here is generated, as set forth in the first paragraph on page 2124, for "those seeking to determine interest in representation for collective bargaining" At this point, no petition has been filed by the Board requiring Board action so it is unclear why the list is sent to the Board.

- The fourth and fifth paragraphs on page 2124, requiring the Board to determine whether a sufficient showing of interest has been made, is inconsistent with the petition discussed in the above two bullets. Again, no election petition has been filed with the Board to represent employees, pursuant to the last paragraph on page 2123, requiring the Board to check whether a sufficient showing of interest has been made to warrant having an election. There is no showing of interest for the Board to determine because no showing of interest has been filed with the Board.
- The sixth through ninth paragraphs on page 2124, continuing on to the first paragraph of page 2125, is a total revamping of the existing hearing process of the Board. The general requirement for a hearing within 8 days of a petition being filed presents these practical realities: 1) there is no reasonable opportunity for the employer to respond to the petition – now we give the employer 15 days to respond; 2) there is no ability for the parties, with or without the assistance of the Board, to resolve bargaining unit issues that may be in dispute – now many cases are resolved informally without need for a hearing; 3) there is an inefficient use of resources by the Board, employers and unions as the parties will be congregating in Montpelier for a hearing that may not be necessary; and 4) the ability to gather Board members together within eight days of the filing of a petition that the Board did not know was going to be filed is slim. There are qualifiers to the 8 day provision that present the question – why is there an 8 day period at all? If quick hearings are desired, the statute can be amended to simply state that hearings shall be held within 30 days, 45 days, or whatever practical date, from when the petition was filed.
- The second and third paragraphs on page 2125, relating to no briefs being filed by the parties and a decision being issued be the Board within two days, are major changes from existing practices where briefs are filed and the Board generally issues unit determination decisions within 30 to 45 days after the filing of briefs. These new provisions could possibly be adhered to in simple cases – although it is not very practical for a part-time

citizen board - but to adhere to them would be impractical in moderately difficult and complex cases.

- The fifth paragraph on page 2125, relating to the Board making available the results of its investigation, is puzzling with respect to its intent. What is the purpose? In any event, there is not going to be a meaningful investigation if hearings are held within 8 days.
- The next two paragraphs on page 2125, relating to conducting an election within 21 days after the petition is filed, is inconsistent with the above provisions relating to exceptions to having a hearing within 8 days that could result in a hearing being held as many as 38 days after a petition is filed. The Board cannot conduct an election within 21 days of a petition being filed under these circumstances.
- The next paragraph on page 2125, providing the Board "shall not hold a hearing to resolve any disputes related to the membership of the bargaining unit until after the election", is internally inconsistent with the preceding provisions that I have discussed in detail above relating to hearings to resolve unit determination issues. This is a major inconsistency that needs to be corrected for the Board to be able to perform its critical duties resolving bargaining unit issues and conducting elections.
- The "two business days" requirement for an employer to file an employee list set forth on page 2126 is very tight – now it is generally about seven days.

Section 2, pages 2127 through 2128, amends the Teachers Labor Relations Act: There are only a few items in this Act that present concerns for the Board because the Board does not conduct elections under the Teachers Act. Here are the concerns:

- The petition referenced in the second paragraph on page 2127 provides for petitioning "the school board and the Board for a list of the employees in the proposed bargaining unit". The purpose of petitioning the Board is unclear since the Board does not have a list of employees; only the employer does.
- The list provided by the employer referenced in the fourth paragraph on page 2127 provides for it being sent to the Board. It is unclear why this list would be sent to the Board since no election petition has been, or can be, filed with the Board.

Section 3, pages 2128 through 2131, amends the Municipal Employee Relations Act, the act under which the Board conducts the most elections. The concerns with this legislation under this Act are identical to those under the State Employees Act set forth above in Section 1. The concerns are:

- The petition referenced in the second full paragraph on page 2129 provides for petitioning "the employer and the Board for a list of the employees in the proposed bargaining unit". It is unclear why the Board would be petitioned since the Board does not have a list of employees; only the employer does. This petition is different from the petitions for election of collective bargaining representative, referenced in the last paragraph on page 2128, that the Board now receives under the Act. There currently is no provision in the Act for the petition referenced in the second full paragraph on page 2129.
- The list provided by the employer referenced in the fourth full paragraph on page 2129 provides for it being sent to the Board. It is unclear why this list would be sent to the Board since no election petition has been filed with the Board to represent employees, pursuant to the last paragraph on page 2128, requiring the Board to check whether a sufficient showing of interest has been made to warrant having an election. The list here is generated, as set forth in the second full paragraph on page 2129, for "those seeking to determine interest in representation for collective bargaining" At this point, no petition has been filed by the Board requiring Board action so it is unclear why the list is sent to the Board.
- The fifth and sixth paragraphs on page 2129, requiring the Board to determine whether a sufficient showing of interest has been made, is inconsistent with the petition discussed in the above two bullets. Again, no election petition has been filed with the Board to represent employees, pursuant to the last paragraph on page 2128, requiring the Board to check whether a sufficient showing of interest has been made to warrant having an election. There is no showing of interest for the Board to determine because no showing of interest has been filed with the Board.
- The last two paragraphs on page 2129, continuing on to the first three paragraphs of page 2131, is a total revamping of the existing hearing process of the Board. The general requirement for a hearing within 8 days of a petition being filed presents these practical realities: 1) there is no reasonable opportunity for the employer to respond to the petition

– now we give the employer 15 days to respond; 2) there is no ability for the parties, with or without the assistance of the Board, to resolve bargaining unit issues that may be in dispute – now many cases are resolved informally without need for a hearing; 3) there is an inefficient use of resources of the Board, employers and unions as the parties will be congregating in Montpelier for a hearing that may not be necessary; and 4) the ability to gather Board members together within eight days of the filing of a petition that the Board did not know was going to be filed is slim. There are qualifiers to the 8 day provision that present the question – why is there an 8 day period at all? If quick hearings are desired, the statute can be amended to simply state that hearings shall be held within 30 days, 45 days, or whatever practical date, from when the petition was filed.

- The fourth and fifth paragraphs on page 2130, relating to no briefs being filed by the parties and a decision being issued be the Board within two days, are major changes from existing practices where briefs are filed and the Board generally issues unit determination decisions within 30 to 45 days after the filing of briefs. These new provisions could possibly be adhered to in simple cases – although it is not very practical for a part-time citizen board - but to adhere to them would be impractical in moderately difficult and complex cases.
- The seventh paragraph on page 2130, relating to the Board making available the results of its investigation, is puzzling with respect to its intent. What is the purpose? In any event, there is not going to be a meaningful investigation if hearings are held within 8 days.
- The next two paragraphs on page 2130, relating to conducting an election within 21 days after the petition is filed, is inconsistent with the above provisions relating to exceptions to having a hearing within 8 days that could result in a hearing being held as many as 38 days after a petition is filed. The Board cannot conduct an election within 21 days of a petition being filed under these circumstances.
- The last paragraph on page 2130 extending to the top of page 2131, providing the Board "shall not hold a hearing to resolve any disputes related to the membership of the bargaining unit until after the election", is internally inconsistent with the preceding provisions that I have discussed in detail above relating to hearings to resolve unit determination issues. This is a major inconsistency that needs to be corrected for the

Board to be able to perform its critical duties resolving bargaining unit issues and conducting elections.

- The “two business days” requirement for an employer to file an employee list set forth on page 2131 is very tight – now it is generally about seven days.